

STATE OF MICHIGAN
DEPARTMENT OF INSURANCE AND FINANCIAL SERVICES
Before the Director of Insurance and Financial Services

Lawrence McClorrine,
Petitioner,

v

Department of Insurance and Financial Services,
Respondent.

Case No. 12-899-L
Docket No. 12-001995-OFIR

Issued and entered
this 23rd day of April 2013
by Randall S. Gregg
Special Deputy Director

FINAL DECISION

I. BACKGROUND

This case concerns the application of Lawrence McClorrine (Petitioner) for a resident insurance producer license. The license was denied because the Petitioner was convicted of two felonies in the state of Ohio, one in 1990 and one in 1994.

On July 12, 2012, Respondent issued to the Petitioner a Notice of License Denial and Opportunity for Hearing. Petitioner challenged the license denial by filing a Petition for Contested Case Hearing. The Respondent filed a Motion for Summary Decision on November 19, 2012. A hearing was held February 12, 2013. The administrative law judge issued a Proposal for Decision (PFD) on March 11, 2013, granting Respondent's motion and recommending that the license denial be upheld.¹

The Petitioner did not file exceptions to the PFD. Michigan courts have long recognized that the failure to file exceptions constitutes a waiver of any objections not raised. *Attorney General v. Public Service Comm*, 136 Mich App 52 (1984).

The PFD is attached. With one exception, the findings and recommendation in the PFD are adopted and made a part of this final decision.

The conclusion of law on page 4 of the PFD regarding the burden of proof is not adopted. The PFD indicates that the Respondent "has the burden of proof in this matter to show by a preponderance of the evidence the legal action to deny Petitioner's application for licensure."

The Petitioner has the burden of proof to present evidence to support a conclusion that he should be granted a producer license. As the party asserting facts which would support his

1. On March 18, 2013, the Governor, by Executive Order 2013-1, transferred the authority, powers, duties, functions, and responsibilities of the Commissioner of Financial and Insurance Regulation to the Director of the Department of Insurance and Financial Services (the Director). The Director has the authority to issue final decisions in administrative hearings such as the present case.

request for a license, the Petitioner has the burden of proof in establishing those facts. The administrative law judge was in error in asserting that the Respondent had the burden of proof. That portion of the PFD is, therefore, not adopted.

II. FINDINGS OF FACT

The Director finds that the Petitioner was convicted of felonies in the state of Ohio in 1990 and 1994. The Petitioner's argument was that he had "paid his debt to society" and that "for purposes of licensure insurance companies only care about a licensee having a history of theft." (PFD, p. 4) The Petitioner did not challenge the fact that he had two felony convictions.

III. CONCLUSIONS OF LAW

Section 1239(1)(f) of the Michigan Insurance Code, MCL 500. 1239(1)(f), provides:

(1) In addition to any other powers under this act, the commissioner...shall refuse to issue a license under section 1205 or 1206a, for any 1 or more of the following causes:

* * *

(f) Having been convicted of a felony.

The Director finds that, because the Petitioner has been convicted of a felony, he is ineligible to receive a Michigan insurance producer license.

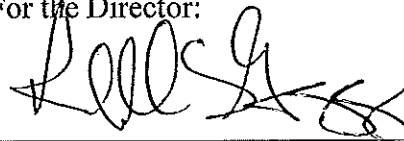
The Petitioner's assertions that he has "paid his debt to society" and that "insurance companies only care about a licensee having a history of theft" are mere expressions of opinion and do not constitute a defense to the direct statutory mandate of section 1239(1)(f) that a felony conviction renders an individual ineligible to receive an insurance producer license in this state.

IV. ORDER

The refusal to issue an insurance producer license to Lawrence McClorrine is upheld.

R. Kevin Clinton
Director

For the Director:



Randall S. Gregg
Special Deputy Director

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STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM

OFIR/OGC

IN THE MATTER OF:

Lawrence McClorrine,
Petitioner

v

Office of Financial and Insurance
Regulation,
Respondent

Docket No.: 12-001995-OFIR

Case No.: 12-899-L

Agency: Office of Financial &
Insurance Regulation

Case Type: OFIR/OFIS-Insurance

Filing Type: Appeal

Issued and entered
this 11th day of March 2013
by Lauren G. Van Steel
Administrative Law Judge

PROPOSAL FOR DECISION

PROCEDURAL HISTORY

This proceeding under the Michigan Insurance Code of 1956, being 1956 PA 218, as amended, MCL 500.100 *et seq.* (hereafter "Insurance Code"), commenced with the issuance of a Notice of Hearing dated January 17, 2013, scheduling a contested case hearing for February 12, 2013. The Notice of Hearing was issued pursuant to a Request for Hearing received by the Michigan Administrative Hearing System on November 19, 2012, and an Order Referring Petition for Hearing and Order to Respond dated November 19, 2012, issued by Annette E. Flood, Chief Deputy Commissioner of the Office of Financial and Insurance Regulation under the provisions of the Insurance Code.

Attached to the Request for Hearing was a copy of a Notice of License Denial and Opportunity for Hearing, dated July 12, 2012; the Applicant's Petition for Contested Case Hearing to Appeal Agency Denial of Application for Insurance Producer License, dated July 30, 2012; and Respondent's Motion for Summary Decision and Brief in Support of Motion, dated November 19, 2012.

On February 12, 2013, the hearing commenced as scheduled. Lawrence McClorrine, Petitioner, appeared by telephone on his own behalf. Conrad L. Tatnall appeared as a staff attorney representative on behalf of the Office of Financial and Insurance Regulation, Respondent.

Petitioner testified on his own behalf. He did not present any other witnesses or offer any exhibits into evidence. Respondent did not present any witnesses.

Sec. 1239. (1) In addition to any other powers under this act . . . the commissioner shall refuse to issue a license under section 1205 or 1206a, for any 1 or more of the following causes: * * *

(f) Having been convicted of a felony. MCL 500.1239(1)(f).
(Emphasis supplied).

FINDINGS OF FACT

Based on the entire record in this matter, including the testimony and admitted exhibits, the following findings of fact are established:

1. On or about June 17, 2012, Petitioner submitted an application with Respondent to become licensed as a non-resident insurance producer in the state of Michigan. [Resp. Exh. 2].
2. Petitioner responded "yes" on the application to the question asking whether he had ever been convicted of a crime. [Resp. Exh. 2].
3. On May 21, 1990, Petitioner was convicted by guilty plea of the felony offense of "Aggravated Trafficking" in the state of Ohio. [Resp. Exh. 1].
4. On July 29, 1994, Petitioner was convicted by guilty plea of the felony offense of "Aggravated Trafficking" in the state of Ohio. [Resp. Exh. 1].
5. On or about July 12, 2012, Jean M. Boven, Deputy Commissioner, Licensing & Product Review Division within the Office of Financial and Insurance Regulation, Respondent, issued a Notice of License Denial. [Resp. Exh. 3].
6. On or about July 30, 2012, Petitioner submitted Applicant's Petition for Contested Case Hearing to Appeal Agency Denial of Application for Insurance Producer License.
7. A properly noticed hearing was held on February 12, 2013, at which Petitioner testified by telephone (without objection by Respondent).
8. Petitioner credibly testified that he is 42 years old and resides in Toledo, Ohio. His educational background includes a G.E.D., attendance at community college, and transportation certification.
9. In Petitioner's hearing testimony, he credibly asserted that he has been licensed (or registered) as a bail bondsman in the state of Ohio. He owns and operates a bail bonds business in Lima, Ohio. In that capacity, he

deals with insurance companies in different states. He expected that the same rules for licensure or registration would apply in Michigan.

10. Petitioner credibly testified that he was truthful on his application for licensure in Michigan by indicating that he had been convicted of a crime. He acknowledged that he does have a history of two felony convictions in the state of Ohio for "Aggravated Trafficking" from 1991 and 1994. The underlying basis for the felony convictions was his selling crack cocaine many years ago. About five years ago, he tried to get the two felony convictions expunged but was not successful. He asserted that he has not had any other convictions.
11. Petitioner believes that he paid his debt to society following his two convictions, and that for purposes of licensure insurance companies only care about a licensee having a history of theft. He asserted that he has never had any theft or identity theft on his record.

Respondent has the burden of proof in this matter to show by a preponderance of the evidence the legal basis for its action to deny Petitioner's application for licensure. See MCL 500.1239(2).

Under Sections 1206a and 1239 of the Insurance Code, *supra*, the Commissioner shall deny an application for a non-resident insurance producer license where an applicant has been convicted of a felony. See MCL 500.1206a(1) and MCL 500.1239(1)(f), as amended by 2008 PA 422 & 423, which amendments became effective on January 6, 2009, prior to the license application at issue here.

Based on the above findings of fact, it is concluded that Respondent has met its burden of proof. A preponderance of the evidence shows that Petitioner was properly denied licensure as a non-resident insurance producer in the state of Michigan under Sections 1206a(1) and 1239(1)(f) of the Insurance Code.

PROPOSED DECISION

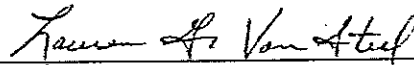
Based on the above findings of fact and conclusions of law, the undersigned Administrative Law Judge proposes the following to the Commissioner:

1. That the above findings of fact and conclusions of law be adopted in the Commissioner's final decision and order, including the granting of summary decision for Respondent;
2. That the Commissioner deny Petitioner's application for a non-resident insurance producer license under Sections 1206a(1) and 1239(1)(f) of the Insurance Code; and

3. That the Commissioner take any other action in this matter deemed appropriate under the applicable provisions of the Insurance Code of 1956, as amended.

EXCEPTIONS

Any Exceptions to this Proposal for Decision should be filed in writing with the Office of Financial and Insurance Regulation, Division of Insurance, Attention: Dawn Kobus, P.O. Box 30220, Lansing, Michigan 48909, within twenty (20) days of the issuance of this Proposal for Decision. An opposing party may file a response within ten (10) days after Exceptions are filed.



Lauren G. Van Steel
Administrative Law Judge